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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,331	03/27/2002	Dana Paul Gruenbacher	8166M	1461

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,331

Applicant(s)

GRUENBACHER ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Priority

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
3. The disclosure is objected to because of the following informalities: on page 2, in the paragraph beginning on line 12, "a first side having a first internal surface and a first external surface, and a second side having a second internal surface and a second external surface" have been described; however, the description beginning on line 1 of page 8 fails to describe what structure constitutes such a first side and a second side. Appropriate correction is required.
4. The following informalities in the specification are noted: line 18 on page 44 and line 26 on page 46 contain incomplete data, i.e., blanks. Appropriate correction is required.
5. The following informalities in the claims are noted: (A) in claims 2 and 28, on line 1, "whereas" should read --wherein--; (B) in claim 5, on line 2, --a-- should be inserted after "by"; (C) in claim 8, on line 2, "a" should read --at--; (D) in claim 18, on line 2, --said-- should be inserted after "of"; (E) in claim 19, on line 1, "at least on" should read --at least one--; (F) in claim 24, on

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line 8, "a" (first occurrence) should read --the-- or --said--; ^{drop}(G) in claim 25, on line 7, --and-- should be inserted after the semi-colon; and ^{drop}(H) in claim 30, on line 6, the period should be changed to --; and--.

- ✱ 6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claimed subject matter which lacks such antecedent basis is as follows: (A) "teeth cleaning" and "car vinyl protectant", as called for by claim 21; and ^{proper}(B) "a first substrate", as called for by claims 29 and 30. Correction is required.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 21 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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10. Claims 29 and 30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 29 and 30 call for the product to be released “sequentially” and “via multiple applications of pressure to said reservoir”. However, the specification fails to describe or support such release of the product from the reservoir.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

A claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed.

12. Claims 13, 14, 21, 24 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claim 13 contains a term lacking proper antecedent basis. The claim recites the limitation “said internal cavity” in line 2. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 21 provides for the use of a semi-enclosed applicator, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

15. Claim 24 contains a term lacking proper antecedent basis. The claim recites the limitation “the finished applicator” in line 12. There is insufficient antecedent basis for this limitation in the claim.

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16. Claim 28 contains a term lacking proper antecedent basis. The claim recites the limitation "said rupturable flexible film reservoir" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claims 1-4, 13, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Schneider. Schneider discloses an applicator having all the claimed features including a first side 21 having a first internal surface and a first external surface (note Fig. 3), a second side 22 having a second internal surface and a second external surface, and at least one flexible film reservoir (constituted by the outer gelatinous shell 14) containing a product (note lines 23-26 in col. 3) disposed between the first external surface of the first side 21 and the second internal surface of the second side 22, the product being adapted to be released via application of pressure to the reservoir (note lines 51-58 in col. 4). With respect to claim 2, Schneider also discloses a substantially fluid-impervious barrier layer 16 is located between the reservoir 14 and the internal surface of the second side 22. With regard to claim 3, Schneider further discloses a mitt (note Figs. 1-3). With respect to claim 4, Schneider additionally discloses that the reservoir 14 is rupturable (note lines 51-58 in col. 4). With regard to claim 13, Schneider further discloses a second substantially fluid-impervious barrier layer 15 within the internal cavity (note Fig. 3). With respect to claim 21, Schneider also discloses that the applicator may be used for window or glass cleaning, cleaners, furniture polish

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lotions, etc. (note lines 31-39 in col. 4). With respect to claim 23, Schneider additionally discloses that the first side 21 has a removable layer 13.

19. Claims 1, 3-12, 15, 16, 18-21, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Spees ('292). Spees discloses an applicator having all the claimed features including a first side (constituted by backing 18) having a first internal surface and a first external surface (note Fig. 2), a second side (constituted by strips 21 and 21') having a second internal surface and a second external surface, and at least one flexible film reservoir 22B (note Fig. 8) containing a product (note lines 50-54 in col. 2) disposed between the first external surface of the first side 18 and the second internal surface of the second side 21, 21', the product being adapted to be released via application of pressure to the reservoir (note lines 54-58 in col. 2). With respect to claims 3 and 27, the pad applicator of Spees inherently constitutes a wipe. With respect to claim 4, Spees also discloses that the reservoir is rupturable (note lines 54-58 in col. 2). With regard to claim 5, Spees further discloses that the reservoir is rendered rupturable by a frangible seal (note from line 67 in col. 2 to line 14 in col. 3). With respect to claim 12, Spees additionally discloses that the frangible seal has at least one stress concentrator (constituted by slits 29). With regard to claim 6, Spees additionally discloses that the reservoir is folded proximate to the frangible seal (note Figs. 12 and 13). With respect to claim 7, Spees also discloses that the reservoir has a first burst force when folded and a second burst force when unfolded with the first burst force being greater than the second burst force (note lines 41-56 in col. 3). With regard to claim 8, Spees further discloses that the reservoir has at least one exit location (note Figs. 5 and 6). With regard to claim 9, Spees additionally discloses that the reservoir has a distribution channel (constituted by central opening 32) with the reservoir being adapted to release the product to the distribution channel. With respect to claim 10, Spees also discloses that the reservoir has a distribution head (constituted by the margin portion 28, note Fig. 5) through which the product is adapted to be released remote from the reservoir. With respect to

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claim 11, Spees further discloses that the reservoir has a plurality of compartments (note Figs. 2 and 5) each containing a product, the plurality of compartments being adapted to provide at least one function wherein the function is one of mixing or multiple dispensing (note Figs. 5 and 6, and lines 48-51 in col. 1). With respect to claim 15, Spees additionally discloses that the reservoir is made of a material capable of varying seal strengths (note lines 51-56 in col. 3). With regard to claim 16, Spees also discloses that the first side 18 is a substantially non-absorbent structure (note lines 29-31 in col. 2). With regard to claim 18, Spees further discloses a friction enhancing element (constituted by coating 19) located at least on the first side 18 (note lines 29-33 in col. 2). With respect to claim 19, Spees additionally discloses that at least the first side 18 is textured (note lines 33-35 in col. 2). With regard to claim 20, Spees also discloses that the reservoir is located to avoid inadvertent dispensing (note lines 49-57 in col. 2). With regard to claim 23, Spees also discloses that the second side has one or more removable layers 21 and 21'. With respect to claim 25, Spees further discloses that the applicator includes a flow restriction layer (constituted by pad 20) disposed between the reservoir and the first external surface (note Fig. 2).

20. Claims 1-4, 8, 17, 21 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerber et al. Gerber et al. disclose an applicator having all the claimed features including a first side or substrate 2 having a first internal surface and a first external surface, a second side having a second internal surface and a second external surface, and a flexible film dosing reservoir (constituted by capsule 1 when made of gelatin, note lines 24-27 in the second column on page 1) containing a product (note lines 29-32 in the second column on page 1) disposed adjacent to the first external surface of the first side or substrate 2 and the second internal surface of the second side (note Fig. 2), the product being adapted to be released via application of pressure to the reservoir 1 (note from line 45 in the first column on page 2 to line 2 in the second column on page 2, and lines 15-18 in the second column on page 2). With respect to claims 2 and 28, Gerber et al. also disclose

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using a substantially impervious barrier layer 4 located between the reservoir 1 and the internal surface of the second side (note Fig. 3). With regard to claims 3 and 27, the pad applicator of Gerber et al. inherently constitutes a wipe. With regard to claims 4 and 25, Gerber et al. further disclose that the reservoir 1 is rupturable (note lines 41-45 in the first column on page 2). With respect to claim 8, Gerber et al. additionally disclose that the reservoir 1 has at least one exit location (note lines 41-45 in the first column on page 2). With respect to claim 17, Gerber et al. also disclose that the second side is made of a substantially absorbent material (note lines 1-3 in the first column on page 2). With respect to claims 29 and 30, Gerber et al. further disclose that the product is adapted to be released sequentially to the first substrate via multiple applications of pressure to the reservoir 1 (note lines 13-20 in the first column on page 1, from line 41 in the first column on page 2 to line 6 in the second column on page 2, and lines 13-20 in the second column on page 2). With respect to claims 25 and 30, Gerber et al. also disclose a flow restriction layer (constituted by layer 4, note Fig. 3 and lines 9-15 in the first column on page 2) disposed between the reservoir 1 and the first substrate (constituted by the bottom portion of layer 3).

21. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Cohen. Cohen discloses an applicator having all the claimed features including a first side (constituted by label 14), a second side (constituted by applicator pad 11), a first fluid-containing flexible film dosing reservoir (constituted by packet 13), and a dispensing aperture (constituted by nozzle 16) associated with the flexible film reservoir 13 and through which the fluid is selectively distributed to the second side 11, and a method for forming a semi-enclosed applicator having all the claimed features including providing a first web 500A corresponding to one of the sides, providing a second web 500B corresponding to the other side, placing the reservoir 13 in a predetermined location in relation to the first and second webs at step 603, securing the reservoir relative to the webs at step 604, and

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cutting at step 501 the applicator in a desired outline shape from the balance of the respective webs to define a finished applicator.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Ketner. Although Schneider fails to disclose using a second reservoir, attention is directed to Ketner who discloses another applicator having plural reservoirs (note lines 51-54 and 58-61 in col. 1 and lines 66-68 in col. 3) to provide for mixing different fluids (note lines 38-42 in col. 1) to effect cleaning or polishing (note lines 67-69 in col. 2). It would have been obvious to one of ordinary skill in the applicator art, at the time the invention was made, to provide more than one reservoir in the applicator or Schneider in view of the teachings of Ketner in order to provide that mixing of different fluids can be used to effect cleaning or polishing.

24. Claims 1-5, 8, 13, 16, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sansonetti in view of Cahill. Sansonetti discloses an applicator having the claimed features including a first side having a first internal surface and a first external surface (constituted by the upper hand portion of the mitt 10), a second side having a second internal surface and a second external surface (constituted by the bottom hand portion of the mitt 10), and a rupturable reservoir 18 containing the product 20 disposed between the first external surface of the first side and the second internal surface of the second side (note Fig. 3). Sansonetti discloses that the product is

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released from the reservoir upon melting of the membrane 22 which seals the product within the reservoir (note lines 27-30 in col. 2). Although Sansonetti fails to disclose that the product 20 is released from the reservoir 18 in response to an application of pressure to the rupturable reservoir or that the reservoir is formed of flexible film, attention is directed to Cahill who discloses another mitten or glove for use in the application of a hand cream having at least one product containing flexible film reservoir 3 (note lines 38-40 in col. 1) sealed by a membrane 5 which ruptures when pressure is applied for that purpose (note lines 41-45 in col. 1) to effect a desired application of the hand-treatment vehicle or product to affected parts of the hand (note lines 2-5 in col. 2). It would have been obvious to one of ordinary skill in the hand care glove/mitten art, at the time the invention was made, to form the reservoir of Sansonetti of flexible film material and to seal the reservoir of Sansonetti with a membrane that ruptures in response to pressure being applied thereto in view of the teachings of Cahill in order to better control the application of hand cream to specific affected parts of the hand. With respect to claim 2, Sansonetti also discloses a fluid-impervious barrier layer (constituted by one side of mitten 12) is located between the reservoir and the internal surface of the second side (note lines 23-27 in col. 2). With regard to claim 3, Sansonetti further discloses that the applicator is in the form of a mitt (note Fig. 2). With respect to claim 4, Cahill further teaches the obviousness of using a reservoir that is rupturable. With respect to claim 5, Cahill additionally teaches the obviousness of rendering the reservoir rupturable by a frangible seal 5. With regard to claim 8, Sansonetti also discloses that the reservoir has at least one exit location at 22. With regard to claim 13, Sansonetti further discloses a second substantially fluid-impervious barrier layer (constituted by the other side of mitten 12) within the cavity 16 (note lines 23-27 in col. 2). With respect to claim 16, Sansonetti additionally discloses that the first side is substantially non-absorbent (note lines 23-27 in col. 2). With regard to claim 21, Sansonetti also discloses that the applicator is

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used for skin lotion application (note lines 6-8 in col. 1). With respect to claim 22, Sansonetti additionally discloses a temperature changing element (constituted by heating element 34).

Conclusion

25. The Examiner is advising attorneys to FAX any response due to Office actions. The U. S. Patent and Trademark Office (USPTO) is experiencing major delays in matching up papers that were mailed. Due to the Anthrax issue, any mail sent to the USPTO is automatically sent to an irradiation center in Virginia. It has been found that the irradiation process makes papers too brittle to handle. Therefore, the irradiation center has to further copy each paper. The originally filed irradiated papers are then placed in a sealed envelope and put in the associated file. After this irradiation process, the "papers" are then sent to the Office where they are matched with the file. This entire procedure causes months in delays due to the quantity of mailed received. Therefore, it is suggested that any response be sent by FAX especially if a time limit is critical. The FAX number for the technical center where this file is located is given in the paragraph below.


26. Any inquiry concerning this communication from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. The examiner can usually be reached Monday through Friday from 5:30 AM to 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson, can be reached on 703-308-2580. The FAX phone number for the organization where this application is assigned is 703-308-7766.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0861.


Kathleen J. Prunner:kjp

July 30, 2003


7/31/03
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